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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO**

CENTRAL VALLEY CHRYSLER-)
PLYMOUTH, INC., DAIMLERCHRYSLER)
CORP., FRONTIER DODGE, INC., GENERAL)
MOTORS CORP., HALLOWELL)
CHEVROLET COMPANY, INC., KELLER)
MOTORS, INC., KITAHARA PONTIAC-)
GMC-BUICK, INC., SURROZ MOTORS, INC.,)
and TOM FIELDS MOTORS, INC.,)

Plaintiffs,

vs.

CATHERINE WITHERSPOON, in her official)
capacity as Executive Officer of the California)
Air Resources Board,)

Defendant.)

Case No. CIV F-02-05017 REC SMS

**STIPULATION AND [PROPOSED] ORDER
MODIFYING ORDER GRANTING
PRELIMINARY INJUNCTION**

Hearing Date:)
Hearing Time:)
Courtroom: One)

Honorable Robert E. Coyle

1 Plaintiffs CENTRAL VALLEY CHRYSLER-PLYMOUTH, INC., DAIMLERCHRYSLER
2 CORP., FRONTIER DODGE, INC., GENERAL MOTORS CORP., HALLOWELL CHEVROLET
3 COMPANY, INC., KELLER MOTORS, INC., KITAHARA PONTIAC-GMC-BUICK, INC.,
4 SURROZ MOTORS, INC., AND TOM FIELDS MOTORS, INC., and defendant CATHERINE
5 WITHERSPOON, IN HER OFFICIAL CAPACITY AS EXECUTIVE OFFICER OF THE
6 CALIFORNIA AIR RESOURCES BOARD, do hereby stipulate for an order modifying the Court's
7 June 11, 2002, Order Granting a Preliminary Injunction, as follows:

8 1. This case was commenced on January 3, 2002. The Complaint challenged the legality
9 of the Final Regulation Order adopted by the California Air Resources Board (CARB) on December 7,
10 2001, amending the Zero Emission Vehicle (ZEV) regulations on the ground that the amended
11 regulations violate the Supremacy Clause of the United States Constitution. The amended regulations
12 have been referred to as the "2001 ZEV Amendments" or the "2001 ZEV regulation" in this litigation.

13 2. On June 11, 2002, the Court preliminarily enjoined the defendant, the Executive Officer
14 of CARB, "from enforcing the 2001 ZEV Amendments with respect to the sale of new motor vehicles
15 in the 2003 or 2004 model years pending final resolution of this litigation." Order at 16. The Court's
16 preliminary injunction order was appealed, and pending a decision by the United States Court of
17 Appeals for the Ninth Circuit, the Court and the parties have not proceeded with the case. The Ninth
18 Circuit heard oral argument on February 13, 2003

19 3. On April 24, 2003, CARB adopted Resolution 03-04, initiating steps towards final
20 adoption of 2003 amendments to the 2001 ZEV regulation. The CARB staff is charged with
21 implementing Resolution 03-04 by way of completing the pending notice-and-comment rulemaking
22 pursuant to the California Administrative Procedure Act.

23 4. In response to Resolution 03-04, on April 28, 2003, the Ninth Circuit *sua sponte*
24 withdrew the appeal in this case from submission and requested that the parties file supplemental briefs
25 to address "the impact on this case of the changes to the Zero Emission Vehicle policy adopted by the
26 California Air Resources Board on April 24, 2003." No supplemental briefs have been filed as the
27 parties have requested extensions from the Ninth Circuit, which that Court has granted.
28

5. At present, the 2001 ZEV regulation has not yet been repealed or replaced by any new regulation. The 2001 ZEV regulation contains regulatory requirements applicable to vehicles manufactured in Model Year 2005. This Court's June 11, 2002 Order does not apply to regulatory requirements for any model year after 2004.

6. The 2005 model year with its corresponding regulatory requirements will begin in January 2004, and for purposes of planning and development by plaintiffs, will begin earlier than that.

7. CARB is in the process of promulgating a new regulation that will amend the 2001 ZEV regulation, but until that new regulation is effective, plaintiffs are faced with compliance with the 2001 ZEV Amendments for model year 2005. Without defendant waiving any of the grounds asserted in defendant's appeal of this Court's June 11, 2002 Order, and without defendant waiving any other basis that she may have for objecting to the issuance of a preliminary injunction in this case, the parties agree that the findings upon which the Court based its decision to enjoin defendant as to Model Years 2003 and 2004 apply to Model Year 2005 as well.

Based upon the foregoing, the parties jointly request an order modifying the Court's June 11, 2002 Order to include model year 2005, such that defendant is enjoined from enforcing the 2001 ZEV Amendments with respect to the sale of new motor vehicles in the 2003, 2004, or 2005 model years pending final resolution of this litigation.

IT IS SO STIPULATED.

Respectfully submitted,

SAGASER, FRANSON & JONES
KIRKLAND & ELLIS

DATED: August __, 2003

By: _____
TIMOTHY JONES
Attorney for Plaintiffs

CENTRAL VALLEY CHRYSLER-
PLYMOUTH, INC., DAIMLERCHRYSLER
CORP., FRONTIER DODGE, INC., GENERAL
MOTORS CORP., HALLOWELL CHEVROLET
COMPANY, INC., KELLER MOTORS, INC.,
KITAHARA PONTIAC-GMC-BUICK, INC.,
SURROZ MOTORS, INC., AND TOM FIELDS
MOTORS, INC.

DEPUTY ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA

DATED: August __, 2003

By: _____
ANITA E. RUUD
GAVIN G. McCABE
Attorneys for Defendant

CATHERINE WITHERSPOON, in her official
capacity as Executive Officer of the California Air
Resources Board

[PROPOSED] ORDER

THE PARTIES HAVING STIPULATED THAT THE FINDINGS UPON WHICH THE COURT BASED ITS DECISION TO ENJOIN DEFENDANT AS TO THE 2003 AND 2004 MODEL YEARS APPLY TO THE 2005 MODEL YEAR AS WELL, AS SET FORTH IN THE FOREGOING STIPULATION, IT IS HEREBY ORDERED that this Court's Order Granting a Preliminary Injunction in this matter is modified to include the 2005 model year. The defendant is enjoined from enforcing the 2001 ZEV Amendments with respect to the sale of new motor vehicles in the 2003, 2004, or 2005 model years pending final resolution of this litigation.

Dated: _____, 2003

ROBERT E. COYLE
UNITED STATES DISTRICT JUDGE